IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.336 OF 2005

Mujibur Rehman Abdul Ganikhan)
aged 37 years, Indian Inhabitant)
residing at Room No.30/31,)
3rd floor, Kathawala Building,)
101, Bhandari Street,)
Mumbai 400 003.)...Petitioner

Versus

1. The State of Maharashtra)
through the Public)
Prosecutor, High Court,)
(A.S.) Bombay.)

2. The Sr. Inspector of Police)
L.T.Marg Police Station,)
Mumbai.)

3. The Special Executive)
Magistrate, Pydhoni Divn.)
Mumbai 400 003.)...Respondents

Shri Subhash Jha with Shri G.D.Upadhyay i/b Law Global for petitioner

Shri B.H.Mehta, APP for Respondent Nos.1 to 3.

CORAM : R.M.S.KHANDEPARKAR &
P.V.KAKADE, JJ.

DATE : 16TH FEBRUARY,2005.

ORAL JUDGMENT :- (Per Khandeparkar, J.)

1. Heard. Rule. By consent, rule made returnable forthwith.

2. The petitioner challenges the Show Cause Notice issued under Section 110(g) of the Code of Criminal

Procedure solely on the ground that the sole incident disclosed in the show cause notice nowhere reveals that the Petitioner is a habitual offender which is otherwise prerequisite for the exercise of powers under Section 110 by the Authority to enable it to call the Petitioner to execute Bond assuring good behaviour. Placing reliance in the decision of the Apex Court in the case of **Gopalanachari vs. State of Kerala reported in 1980 (supp) Supreme Court Cases 649** and the decision of the Division Bench of this Court in the case of **Santosh Vishwanath Shinde vs. J.R.Sangam Asstt. Commissioner of Police & Anr.** r**eported in 1995(1) Crimes 571**, the learned advocate for the Petitioner submitted that the provisions under clause 110(g) have to be read with the other provisions of Section 110 as well as Section 109 of Cr.P.C. and having so read along with the show cause notice under challenge, it is apparent that the contents of the show cause notice disclosed that the same nowhere warranted exercise of powers by the authorities under the said provision nor it justified calling the petitioner to execute any bond in terms of Section 110(g) of Cr.P.C. It is the contention of the petitioner that habitual commission of offence is the prerequisite to call upon a party to execute the Bond in

terms of Section 110 (g) of Cr.P.C.

3. At the outset it is to be mentioned that the Petition has been filed challenging the show cause notice issued pursuant to the Order under Section 111 Cr. P.C. calling upon the Petitioner to show cause against the execution of bond in terms of the provisions of Section 110(g) of Cr.P.C. Obviously, the Petitioner has sufficient opportunity to show cause against the said requirement of execution of the bond and in such cases interference by this Court in writ jurisdiction is to be avoided, unless, of course, when the order under Section 111 of Cr. P.C. discloses lack of bonafide and on that count itself the petition could be rejected. However, since the petitioner has also raised a purely question of law, it would be necessary to deal with the same. The point raised is whether for issuance of show cause notice on information in terms of Section 110(g) of Cr.P.C., is it necessary that such person should be a habitual offender.

4. Section 110 Cr.P.C. comprises of different clauses (a) to (g). Clauses from (a) to (f) thereof relate to the persons, who indulge in different offences

"by habit" or "habitually", whereas clause (g) relates to the persons who are desperate and dangerous. It nowhere refers to the persons committing offences habitually. In fact, the legislature has avoided the expression "by habit" or "habitually" to be used in clause (g), while one of those expression has been consistently used in clauses (a) to (f). It, therefore, discloses that clause (g) cannot be read, as sought to be argued by the learned advocate for the petitioner. For the purpose of the proceeding under clause (g) therefore , it is not necessary that the person should be habitual offender.

5. The rule of interpretation ejusdem generis is well settled and it applies where a general word follows particular and specific words of same nature as itself but it has no application where there is no genus or category indicated by the Legislature. It was clearly held by the Apex Court in Jage Ram & Ors. vs The State of Haryana & Ors. reported in AIR 1971 SC 1033 that "the ejusdem generis rule is not a rule of law but merely a rule of construction to aid the Courts to find out the true intention of the Legislature. If a given provision is plain and unambiguous and the legislature

intent is clear, there is no occasion to call into aid that rule."

6. Perusal of the proviso of law comprised under Section 110 of Cr.P.C. it is evident that each clause thereunder relates to different type of offence, besides while clauses (a) to (f) relate to the habitual offenders, the clause (g) relates to desperate and dangerous persons. The words used therein are very clear and unambiguous and do not warrant any interpretation as sought to be argued on behalf of the petitioner. This however does not mean that habitual offender cannot be desperate and/or dangerous. But, it does not require that such desperate and/or dangerous person should necessarily be a habitual offender, though such person if found to be desperate and dangerous can also be subjected to the requirement of execution of bond under Section 116 of Cr.P.C.

7. Perusal of the show cause notice issued in the matter in hand discloses that on an allegation of theft of jewellery, a person was assaulted to such an extent that he lost his life and further suppressing the fact that he lost his life on account of the assault by the

Petitioner and others, a false information was sought to be given that the dead boy was lying on the road. The show cause notice refers to various facts prima facie disclosing involvement of the petitioner in the alleged illegal activity. Obviously, an opportunity is given to the petitioner to show cause by issuing the said notice. Instead of availing the said opportunity, the petitioner has chosen to rush to this Court for quashing the show cause notice without any justifiable ground.

8. The decision of the Apex Court Gopalanachari (supra) nowhere lays down that for an exercise of powers under Section 110(g) a person has necessarily to be habitual, desperate and dangerous. It has been clearly observed therein that "words of wide import, vague amplitude and for too generalised to be safe in the hands of the police cannot be constitutionalised in the context of Article 21 unless read down to be as fair and reasonable legislation with reverence for human rights. A glance at Section 110(g) shows that only a narrow signification can be attached to the words in clauses (a) to (g), "by habit a robber .....", "by habit a receiver of stolen property ....", "habitually protects or harbours thieves ....", "habitually commits or

attempts to commit or abets the commission of ....", " is so desperate and dangerous as to render his being at large without security hazardous to the community." These expression, when they become part of the preventive chapter with potential for deprivation of a man’s personal freedom upto a period of three years, must be scrutinised by the court closely and anxiously." The occasion to scrutinise the materials in the process of adjudication relating to the allegations against the petitioner would arise after the Petitioner files his reply to the show cause notice. Being so, it is premature to consider the same by merely referring to the show cause notice. The said decision of the Apex Court nowhere supports the contentions sought to be raised on behalf of the petitioner.

9. The Division Bench of this Court in Santosh Vishwanath Shinde’s case had ruled thus:

> "6. The notice in the instant case mentions only one solitary incident. Except the solitary incident no data is made available justifying the resort to the provisions of Section 110 of the Criminal Procedure Code. No

antecedents are pointed out as far as the detenus are concerned. Hence, resort to the provisions of Section 110 and issuance of the impugned notice upon the detenus under Section 111 is not justified in the facts and circumstances of the case. In the present case, apart from the incident quoted in the notice, no material is pointed out in order to draw an inference that the detenus are by habit robbers, house-breakers, thieves, or forgers, or they habitually commit, or attempt to commit, or abet the commission of offences involving the breach of peace. We have not the slightest doubt that expressions like "you are habituated to commit such offences" cannot be flung in the face of a man with laxity of semantics. The Court must insist on specificity of facts and be satisfied that one swallow does not make a summer and a consistent course of conduct convincing enough to draw the rigorous inference that by confirmed habit, which is second nature, the counter-petitioner is sure to commit the offences mentioned in he is not kept captive. Preventive sections

> privative of freedom, if incautiously proved by indolent judicial processes, may do deeper injury. They will have the effect of detention of one who has not been held guilty of a crime and carry with it the judicial imprimatur, to boot. To call a man dangerous is itself dangerous, to call a man desperate is to affix a desperate adjective to stigmatise a person as hazardous to the community is itself a judicial hazard unless compulsive testimony carrying credence is abundantly available."

Obviously, it was in relation to the case wherein the show cause notice was issued, which read as under :

> "On 27.12.1994 at 19.45, you were coming along with your colleagues in the form of Morcha towards Barkatali Road while shouting slogans in loud voice. At that time, you were stopped at Vidya Hostel, Barkat Ali Road. On that occasion, you had gathered unlawfully in breach of order of Commissioner of Police, Greater Bombay. Though you were ordered by the police preventing you from slogan shouting, you

> refused to obey such orders and continued shouting slogan. Thereby, you committed an offence of breach of public peace. Therefore, an offence was registered against you and your colleagues and you were arrested."

Apparently it was not a case disclosing the facts to support, even prima facie, the allegation of a person being desperate and dangerous. Being so, the observations made in the said decision cannot apply to the case where a person is sought to be dealt with on allegation of being a desperate and dangerous, prima facie revealed from the facts narrated in the notice.

10. The ratio of the decision is to be understood after considering the facts of the case, the point which was raised for consideration and the ruling given on such point, as has been held by the Apex Court in **Union of India vs. Dhanwanti Devi and Ors. 1996(6) SCC 44**.

11. For the reasons stated herein above, the Petition fails and is hereby dismissed. The rule is discharged with no order as to costs.

(R.M.S.Khandeparkar,J.)

(P.V.Kakade, J.)

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